



State of California—Health and Human Services Agency  
**Department of Health Services**



Governor

**ACTION:** Notice of Proposed Rulemaking  
Title 22, California Code of Regulations

**SUBJECT:** Secondary Drinking Water Standards, **R-21-03**

**PUBLIC PROCEEDINGS:** Notice is hereby given that the California Department of Health Services will conduct written public proceedings during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Water Act (Sections 116270 - 116751, Health and Safety Code [HSC]).

Pursuant to HSC Section 116555(a)(1), public drinking water systems are required to comply with secondary drinking water standards [as defined in HSC Section 116275(d)]. The existing secondary drinking water standards regulations lack clarity and a specific procedure for determining secondary maximum contaminant level (MCL) compliance. Therefore, the Department proposes to amend existing Section 64449, Chapter 15, and adopt two new Sections (64449.2 and 64449.4) into the same chapter to update and clarify the Secondary Drinking Water Standards regulations. The proposed amendments to Section 64449 Secondary Maximum Contaminant Levels and Compliance involve a reorganization of the existing requirements, the elimination of the corrosivity standard, and a clarification of the secondary MCL compliance determination procedure. The proposed Section 64449.2 Waivers for Secondary MCL Compliance clarifies and incorporates application requirements for secondary MCL waivers from the existing Section 64449. Proposed Section 64449.4 Use of Sources that Exceed a Secondary MCL and Do Not Have a Waiver includes proposed requirements for the short-term use of a source that exceeds a secondary MCL.

There are no comparable federal regulations for secondary MCLs.

The net effects of the proposed regulations for public drinking water systems are as follows:

- Greater clarity and less ambiguity in the secondary drinking water MCL and monitoring requirements;
- Community water system requirements related to corrosivity would be addressed only in the Lead and Copper regulations, Chapter 17.5;
- Community water systems would determine secondary MCL compliance on the basis of an average of four consecutive quarterly samples for those constituents with fixed consumer acceptance levels;
- Community water systems would have the option via a waiver process to use sequestering for iron and/or manganese treatment to improve the aesthetics of the water if a source has violated the iron and/or manganese MCLs; and
- Community water systems would have specific procedures and criteria for the use of sources exceeding a secondary MCL.

AUTHORITY: Sections 100275 and 116375, Health and Safety Code.

REFERENCE: Sections 116385, 116455, 116555 and 116610, Health and Safety Code.

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on November 10, 2005, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to [regulation@dhs.ca.gov](mailto:regulation@dhs.ca.gov) (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-21-03" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments on DHS Regulations" link on the Department website at <http://www.applications.dhs.ca.gov/regulations/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies

of any notices for proposed changes to the regulation text on which additional comments may be solicited.

**INQUIRIES:** Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Michael G. McKibben, P.E., Senior Engineer, Standards and Technology Unit, of the Drinking Water Program at (619) 525-4023.

All other inquiries concerning the action described in this notice may be directed to Don Lee of the Office of Regulations at (916) 440-7673 or to the designated backup contact person, Linda Tutor, at (916) 440-7697.

**CONTACTS:** In any inquiries or written comments, please identify the action by using the Department regulation package identifier, R-21-03.

**AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS:** The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at <http://www.applications.dhs.gov/regulations/> and then clicking on the "Select DHS regulations" button.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email [regulation@dhs.ca.gov](mailto:regulation@dhs.ca.gov), or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT:** The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

**FISCAL IMPACT ESTIMATE:**

- A. Fiscal Effect on Local Government: None to insignificant fiscal impact with possible savings in the future.
- B. Fiscal Effect on State Government: None to insignificant fiscal impact with possible savings in the future.

- C. Fiscal Effect on Federal Funding of State Programs: None.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The Department has concluded that any incremental costs resulting from the proposed revisions would be insignificant and there may be a small savings for a few systems when they are required to give public notice.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations will not significantly affect the following:

1. The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in this area in that there would not be any change in water system or regulatory personnel needed for compliance with the proposed requirements.
2. The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the proposed regulation will not result in the creation or elimination of water systems. The impact of these regulations will be insignificant.
3. The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any affect on expansion.

The Department has determined that the regulations would not affect small businesses. Government Code Chapter 3.5, Article 2, Section 11342.610 excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Don Lee, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7673, and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

#### DEPARTMENT OF HEALTH SERVICES

R-21-03

Dated:

Sandra Shewry  
Director